

# Nutshell (2021) Limited

## Terms of Business

### 1. Definitions:

1.1. **Nutshell** means Nutshell (2021) Limited also trading as Nutshell Camera Rentals.

1.2. The **Customer** means the person(s) or entity hiring equipment, or buying goods or services from Nutshell and includes all persons acting on behalf of or under the instructions of the Hirer.

1.3. **Hire** includes hire of equipment, borrowing equipment, free or discounted hires, taking possession or control of equipment for testing and the like irrespective of whether an advance reservation has been arranged. Equipment can be on hire to a customer while still on Nutshell premises.

1.4. **Equipment** means any equipment, tools, cases, accessories, media, books or vehicles hired by Nutshell to the customer whether or not they are owned by Nutshell.

1.5. **Goods** means any item(s) sold by Nutshell.

1.6. **Lost** means lost, stolen, missing or otherwise unaccounted for.

1.7. **Damaged** means damaged or destroyed, and includes cosmetic damage.

2. **All business** with Nutshell is conducted strictly on the basis of these terms of business which replace previous terms of business and take precedence over any terms offered by the customer.

3. **By requesting a reservation** with Nutshell, hiring equipment or personnel, or purchasing goods from Nutshell the Customer will be **deemed to have accepted** all the terms and conditions of this agreement without qualification.

4. These terms **cannot be altered** in any way except by the **written agreement** of Nutshell.

5. **Any relaxation**, waiver or failure to enforce any part of these terms by Nutshell does **not constitute a waiver of any other part of these terms** and does not apply to subsequent occasions.

6. If for any reason the **customer does not sign a dispatch receipt**, an equipment condition report or other hire documentation, acceptance of the equipment or goods when handed over to the customer shall in itself constitute an acceptance of the dispatch receipt, equipment condition report, other documentation and of any estimate or quotation, as prepared and signed by Nutshell.

7. The Customer **shall not assign, transfer or sublet** their rights under this agreement and will not pledge, mortgage or encumber equipment or their rights under this agreement.

8. The customer shall **not re-hire the equipment** to another party without written permission from Nutshell.

9. The Customer will **comply with all relevant laws** and regulations when using the equipment.

10. The Customer shall advise Nutshell of the intended and **actual situation of the equipment** during the hire period and shall not remove the equipment out of New Zealand.

11. The Customer shall forthwith **allow Nutshell access to the equipment** and goods for the purposes of inspection, repair, or recovery under these terms.

12. The customer shall **not allow** the equipment to be used on any **abnormal or hazardous assignment** without prior written permission of Nutshell. This includes but is not limited to environments where the equipment could be affected by atmospheric or environmental corrosion, including volcanic or salt laden atmospheres, sandy, dusty salt water or fresh water environments,

and on boats or over water. Written permission under this clause of Nutshell terms does not constitute any waiver of Nutshell's rights under this agreement.

13. The Customer **acknowledges receipt of equipment in good working order and good condition**, without scratches, impact damaged or fault of any nature except as noted by Nutshell.

14. Nutshell is not responsible for incomplete kits or incorrect functioning of equipment. It is the **responsibility of the Customer to check the functioning and adequacy** of the equipment.

15. The Customer should monitor and check all recordings made by the equipment. Whatever the reason, **Nutshell does not accept any responsibility** for failure to record data, defects in recording, or partial or complete **loss of data**.

16. Nutshell may charge a **cancellation fee**, determined at the sole discretion of Nutshell, in lieu of estimated charges on a confirmed reservation that is cancelled or postponed.

17. The **Customer accepts full responsibility for the care and safekeeping** of the equipment or goods from the time the equipment or goods are handed over to it at Nutshell's premises or to a carrier for freighting to the customer. Where the Nutshell agrees to deliver the equipment or goods the customer is liable from the time they leave Nutshell's premises. Nutshell re-assumes responsibility for the equipment when it is handed back into the care of Nutshell at Nutshell's premises, or until they are shipped back to Nutshell's premises and accepted by Nutshell. Where Nutshell picks up the equipment Nutshell reassumes responsibility for the equipment when it arrives at Nutshell's premises.

18. **Acceptance of returned equipment** by Nutshell does not acknowledge that the equipment is complete, undamaged and in good working order and condition and does not constitute a discharge of the Customer from any obligations under these terms. This can **only be acknowledged after Nutshell has completed its post hire checks**.

19. Where the customer hires from Nutshell a **self contained package consisting of Mr Gavin Stroud as operator of equipment, and/or vehicle** and the equipment remains under the direct supervision and control of Mr Stroud:

19.1. Then for the purpose of these terms the equipment has not been handed over the care and safekeeping of the customer.

19.2. In this case equipment insurance is provided by Nutshell, and in the event of equipment loss or damage during the period of hire the customer's liability is reduced to the applicable insurance excesses plus the extent that losses incurred by Nutshell are not fully recompensed by claims under Nutshell's own insurance. Various exclusions apply to Nutshell's insurance.

19.3. If, at any time, some or all of the equipment is handed over to the customer then the equipment is in the customer's care and safekeeping under these terms, just as if it had been hired from Nutshell independently of Mr Stroud.

19.4. Any equipment additional to the self contained package under the direct control of Mr Stroud is deemed to have been handed over to the care and safekeeping of the customer in the same way as any other equipment hired from Nutshell independently of Mr Stroud.

20. The **Customer shall arrange comprehensive insurance** acceptable to Nutshell and appropriate to filming with a reputable insurer for the equipment and goods for the duration of the hire. This shall cover loss and damage and extra charges for replacement equipment and extended hire fees until equipment is replaced or repaired. Nutshell shall be named as a loss payee under the insurance policy. The Customer shall provide evidence of suitable insurance when requested to do so by Nutshell, but acceptance of that evidence does not reduce the customer's liability under these terms.

21. The **customer may request insurance** cover under Nutshell's own policies for hired equipment. Nutshell may at its own sole discretion agree and charge a damage waiver fee for doing so. In this case if equipment is lost or damaged the customer's liability is reduced to the applicable insurance excesses plus the extent that losses incurred by Nutshell are not fully recompensed by claims under Nutshell's own insurance. Various exclusions apply to Nutshell's insurance.

**22. If equipment is lost or damaged:**

22.1. It will be forthwith returned to Nutshell.

22.2. The customer shall pay on demand to Nutshell the cost of assessment, estimation, checking of the equipment and associated equipment, investigation costs, and recovery costs.

22.3. The customer shall also pay on demand to Nutshell the full current replacement cost, and/or the full cost of repair at normal repair rates, and the full costs of arranging the repair or replacement, including but not limited to freight costs, third party advice and the cost of preparation of claims and documentation.

22.4. Lost equipment is deemed to be unrecoverable after 14 days.

22.5. Nutshell has the sole discretion and right to decide whether equipment is replaced or repaired, who shall carry out the repair, and whether to accept an equivalent monetary recompense in lieu of replacement or damage.

22.6. The customer shall pay to Nutshell on demand hire fees for the equipment until the equipment has been repaired or replaced, up to a maximum period of 13 weeks from the date of the loss or damage, or a maximum of 4 weeks if Nutshell elects not to replace equipment. Hire fees will be at the rate applicable for the hire until the period of the reservation ends then revert to full list price.

23. Any loss of or damage to the equipment shall be forthwith notified to Nutshell and the **Customer will promptly supply a written report** detailing the circumstances of the damage or loss and supply all relevant information and documentation to Nutshell, its insurer, the Police and appropriate authorities. The Customer will not do any thing to prejudice an insurance claim.

24. If Nutshell **supplies replacements** for lost or damaged equipment it will be charged at full list rates.

25. Return of equipment in a **dirty** or improperly packaged condition, will result in a **surcharge**.

26. If, after a hire, in Nutshell's opinion, equipment requires **disassembly for checking**, whether or not damage is found the customer will be charged for this.

27. The Customer shall ensure all equipment is **used in a skilful and proper manner** by persons with the necessary experience and familiarity with that type of equipment.

28. The Customer shall use the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment.

29. The Hirer warrants that all persons who use the equipment shall be **COMPETENT** and **QUALIFIED** to use the equipment, shall use the equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, codes of practice and/or the manufacturer of the equipment relating to the use and safety of the equipment and shall comply with all obligations in relation to the use and control of the equipment and person using said equipment in accordance with the Health and Safety Act 1992 and April 2016.

30. Except as permitted by the Consumer Guarantees Act 1993, the Customer shall not bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the equipment.

31. The Customer will **not attempt to adjust or repair** or interfere with equipment except where it is necessary for its proper and normal use.

32. Except to the extent implied by any statute or regulation in force Nutshell makes no warranties or representations in respect of the equipment or goods and the **Customer accepts the equipment relying on their own knowledge** and opinion of the equipment.

33. **Title to goods** sold to the customer does not pass to the customer until fully paid for, but the customer is liable for the goods that are lost, or damaged.

34. Nutshell may register a **security interest in goods** under Personal Property Security Act 1999.

35. Goods are **not returnable**.

36. Nutshell (and the supplier of equipment or goods to Nutshell) is **not liable for consequential losses** to the customer or any third party caused as a result of the equipment not being fit for any use to which it is put, or failure of the equipment to perform adequately in any way, or for any other reason.

37. For **hire durations of longer than 1 month**, or in any circumstances where the hire period is extended beyond the equipment or appliance electrical safety test date, it shall be the **responsibility of the Customer to meet the conditions of testing, tagging** and recording required by AS/NZS3760.

38. **In the event of any breach of these terms**, or in Nutshell's opinion the Customer is likely to breach these terms Nutshell may at its sole discretion terminate the hire and/or sale without further notice and the Customer shall forthwith at their own risk and cost, deliver up the equipment and/or goods to the Nutshells premises. If the Customer refuses or does not do this, Nutshell, its servants and agents may, without previous notice, enter into and upon any premises where the equipment is, seize and retake possession of it. The Customer shall be liable to pay upon demand all costs of recovery.

39. **Payment** will be at the time and in the manner specified by Nutshell. Unless otherwise agreed terms of payment is cash on delivery. A non-refundable deposit may be required by Nutshell as prepayment to confirm a reservation, and/or a refundable security deposit may be required by Nutshell. Nutshell may hand over unpaid debts to a collection agency.

40. If the **Customer breaches these terms, fails** to make any payment in full by due date, or in Nutshell's opinion is likely to be unable to make payment in full by due date, is placed in receivership, liquidation, voluntary administration, bankruptcy or makes creditor arrangements then Nutshell may at its sole discretion terminate the hire or sale and cancel any outstanding order without further notice, and Nutshell's determination of the amount due, including any further charges, is deemed to be correct.

41. In the event of **default by the Customer**, Nutshell shall be entitled to demand and recover from the Customer interest on any amount outstanding calculated from the date the sum or sums were due to be paid until the date of the actual payment, payable at the Nutshell's then current overdraft rate plus 4% p.a. compounding monthly.

42. **Nutshell has the right to seek credit and bona fides information** from any source about the Customer and the persons employed by the customer who may operate the equipment or otherwise be entrusted with its safekeeping. The Customer consents to the disclosure of this information.

43. **Nutshell has the right to refuse a reservation**, hire, sale, to extend credit, and refuse to allow certain personnel to operate the equipment, without giving reasons.

44. The Customer will be liable to pay to Nutshell upon demand all and any **legal expenses and collection costs** incurred Nutshell in the process enforcing its rights under these terms.

45. The **Customer shall not deduct**, withhold or set-off against any sum payable to Nutshell. Nutshell may accept and apply payments from the Customer in respect of any indebtedness and Nutshell will not be bound by any conditions or qualifications attaching to such payments.

46. Reference: Health & Safety Laws - April 4th 2016

*Where multiple businesses are working together and they have overlapping health and safety duties, they must consult, cooperate and coordinate their health and safety activities to avoid duplication and prevent gaps*

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